IN THE COURT OF APPEALS OF IOWA

No. 3-1200 / 12-2038
Filed January 23, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KEITH HANSEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes, Judge.

A defendant appeals the denial of his motion to dismiss on speedy indictment grounds. **REVERSED AND REMANDED FOR DISMISSAL.**

Mark C. Smith, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, Adam Kenworthy, Legal Intern, Michael J. Walton, County Attorney, and Kelly Cunningham and Joseph Grubisich, Assistant County Attorneys, for appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

TABOR, J.

"I always thought if you weren't under arrest, you were able to leave," Keith Hansen testified at a hearing on his motion to dismiss for a speedy indictment violation. Appealing his conviction for conspiracy to deliver heroin, Hansen argues he reasonably believed he was under arrest, for purposes of Iowa Rule of Criminal Procedure 2.33(2)(a) when Davenport police handcuffed him, transported him to the police station, questioned him on and off for more than two hours, and repeatedly told him he was not free to leave.

The district court denied Hansen's motion to dismiss, distinguishing his situation from *State v. Wing*, 791 N.W.2d 243 (Iowa 2010), because officers told Hansen he was not under arrest and because police did not have grounds to arrest Hansen as the investigation was ongoing. Under our reading of *Wing*, the officers' statements and the measure of probable cause do not settle the arrest question. Instead, we ask if a reasonable person in Hansen's position would have believed the police restraint on his freedom was so significant that it amounted to an arrest. *Wing*, 791 N.W.2d at 249. Because the Davenport police restrained Hansen beyond what is permitted for an investigatory detention—even if they lacked probable cause—the encounter was equivalent to an arrest and triggered the speedy indictment clock. Accordingly, we reverse and remand for a dismissal.

I. Background Facts and Proceedings

On March 7, 2012, Davenport patrol officers responded to an emergency call that Nicole Fowler needed medical attention. The police found her in the

company of Keith Hansen at the home of Bo Dipple. Dipple told Officer Joseph Regan that Hansen brought an unresponsive Fowler to his house, saying she had taken the drug Ecstasy. But Hansen recalled telling the medics Fowler had actually overdosed on heroin so that they would administer the appropriate antidote.

When responding to the rather chaotic scene inside Dipple's residence, Corporal Gordon Morse asked Hansen for identification, patted him down, handcuffed him, and moved him outside to the back of the squad car. Hansen asked Morse if he was under arrest, and Morse said "no"—but the police needed some information from him. According to the minutes of evidence, Corporal Morse advised Hansen of his *Miranda* rights.[1] Morse recalled Hansen asking what he was being arrested for, and Morse responded that Hansen "was not under arrest at this time but that status could change." Hansen remained handcuffed in the squad car in front of Dipple's residence for thirty to forty-five minutes.

During this time, the patrol officers talked to Fowler after she regained consciousness and was being moved to the ambulance. They asked for consent to search her vehicle, but she declined. The officers checked with their sergeant, who determined they had "an independent basis" to search the vehicle. They did not find any evidence in the car.

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[1] Hansen testified at the hearing on the motion to dismiss that he did not receive *Miranda* warnings, but his attorney stipulated at the end of the hearing that his client was *Mirandized*.

The police eventually transported Hansen to the station where he was interviewed by Detective Lansing. Hansen did not voluntarily go to the station, testifying he "didn't have a choice in the matter."[2] Once at the station, Hansen waited to be interviewed for about twenty minutes while still in handcuffs. The detective removed the cuffs when the questioning started. Twice during the interview, Hansen asked if he was free to leave, and the detective told him that he was not free to leave but was not under arrest. Hansen recalled being interviewed for about thirty minutes, waiting another thirty to forty-five minutes, and then being questioned for an additional thirty to thirty-five minutes—estimating his total time with the police at two and one-half hours. Hansen changed his story at the police station, acknowledging he and Fowler went to Dipple's residence to buy heroin. Hanson also admitted he injected Fowler with the heroin, causing her overdose.

Hansen allowed the detectives to download numbers from his cell phone and accompanied them to locations where he had purchased illegal drugs. The police then gave Hansen a ride home, and he agreed to contact Detective Lansing the next day. In the following days, the detectives continued their investigation, including an interview with Fowler on March 9, 2012.

On June 6, 2012, the State filed a trial information charging Hansen with conspiracy to commit the non-forcible felony of heroin delivery. On July 13, 2012, Hansen filed a motion to dismiss, alleging the State violated rule 2.33(2)(a)

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[2] Detective Lansing testified at the hearing on the motion to dismiss that Hansen agreed to go down to the station to speak further with the detectives. But the district court found police handcuffed Hansen and "took him to the police department without asking him if he would go."

by not bringing charges within forty-five days of his arrest. He asserted he was arrested on March 7, 2012, which was ninety-one days before the State filed its trial information.

On August 8, 2012, the district court held a hearing on the motion to dismiss. The State offered testimony from Detective Scott Lansing, and Hansen testified in support of his motion. The district court issued its ruling on August 29, 2012, stating under *Wing*, this was a "hard" case to decide.

> Any time someone is being held at the police station not under arrest and being told they cannot leave is cause for concern and a potential Fourth Amendment violation. Even the defendant in his testimony commented on the idea that after a certain period of time the police should arrest you or let you go. That's what makes the case hard to decide along with his being handcuffed and taken to the station against his will. It's certainly understandable the defendant was afraid of being arrested.

But the district court nevertheless denied the motion to dismiss, concluding the police encounter with Hansen on the night of March 7, 2012, did not trigger the speedy indictment clock because the investigation was ongoing and police repeatedly told him he was not under arrest.

On September 4, 2012, Hansen stipulated to a bench trial on the minutes of evidence. On September 11, 2012, the court found Hansen guilty as charged. The court sentenced Hansen to five years in prison and a $750 fine, suspending both and placing him on probation for two years. Hansen now appeals, challenging the denial on his motion to dismiss.

II. Standard of Review

We review the denial of a motion to dismiss on speedy indictment grounds for correction of legal error. *Wing*, 791 N.W.2d at 246.

III. Analysis

The success of Hansen's appeal hinges on the meaning of the word "arrest" in Iowa's speedy indictment rule. The rule provides:

> When an adult is arrested for the commission of a public offense . . . and an indictment is not found against the defendant within 45 days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives the defendant's right thereto.

Iowa R. Crim. P. 2.33(2)(a).

If Hansen was arrested during his encounter with police on March 7, 2012, then the prosecution must be dismissed because the State did not file its trial information[3] within forty-five days of that event.

Our legislature has defined arrest as "the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the person's submission to custody." Iowa Code § 804.5 (2011); *see State v. Rains*, 574 N.W.2d 904, 910 (Iowa 1998) (embracing sections 804.5 and 804.14 to define and determine the process of arrest for purposes of the speedy indictment rule). Section 804.14 requires certain notifications during an arrest:

> The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person's custody.

But a peace officer's seizure of a suspect may constitute an arrest even if the officer does not follow the protocol in section 804.14. *Wing*, 791 N.W.2d at 247–48 ("No formal announcement is required, as long as [the person making

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[3] Under Iowa Rule of Criminal Procedure 2.5(5), the term indictment embraces the filing of a trial information. *See Ennega v. State*, 812 N.W.2d 696, 705 (Iowa 2012).

the arrest] sufficiently conveys, either through words or conduct, the intent to perform a[n] . . . arrest." (alterations to original)). *Wing* eschewed a bright-line test for determining an arrest. *Id*. at 248. "Courts must determine on a case-by-case basis whether a seizure constitutes an arrest, considering whether the suspects are informed of their arrest, are handcuffed or booked, submit to authority, or believe they are free to leave." *State v. Miller*, 818 N.W.2d 267, 272 (Iowa Ct. App. 2012) (citing *Wing*, 791 N.W.2d at 248). The ultimate question is "whether a reasonable person in the defendant's position would have believed an arrest occurred, including whether the arresting officer manifested a purpose to arrest." *Wing*, 791 N.W.2d at 249. The *Wing* court compared its reasonable-person test to the way courts analyze whether a person has been seized for Fourth Amendment purposes. *Id.*

Hansen contends he was arrested on March 7, 2012, because a reasonable person in his shoes would have believed an arrest occurred when police asked for his identification at the scene of Fowler's overdose, patted him down, read his *Miranda* rights, handcuffed him, placed him in a squad car, transported him to the police station without his permission, kept him in handcuffs for another twenty minutes at the station, and then questioned him over the course of two hours—all the while telling him he was not free to leave. We agree a person subjected to this extent and duration of police restraint would have reasonably believed he was under arrest. *See id*. at 252 (finding arrest occurred when police objectively evidenced purpose to arrest and suspect submitted to that authority); *see also State v. Delockroy*, 559 N.W.2d 43, 46 (Iowa Ct. App.

1996) (finding arrest occurred when law enforcement gave Delockroy no choice but to accompany them to the sheriff's office).

The assistant county attorney argued at the hearing on the motion to dismiss that

> *Wing* does not stand for the proposition that officers cannot detain subjects for purposes of gathering an investigation. *Wing* recognizes that there is the right to detain individuals, and it specifically talks about that detention is not tantamount to an arrest, and there's a specific discussion in *Wing* about that. So detention is absolutely appropriate.

The only discussion in *Wing* concerning the difference between an arrest and an investigatory detention came in the dissent: "The right to a speedy trial was designed to minimize the fears and burdens associated with a criminal prosecution, not those associated with a brief detention of a person by police for suspected criminal conduct that gives rise to fears of a future criminal prosecution." *Wing*, 791 N.W.2d at 255 (Cady, C.J., dissenting).

But in fairness to the prosecutor's argument, our cases do recognize that an officer may briefly detain a suspect to investigate an offense without placing that suspect into custody. *See Miller,* 818 N.W.2d at 276. The problem here is Hansen's interaction with the police was more than a brief detention authorized under *Terry v. Ohio*, 392 U.S. 1 (1968). "Officers, by exceeding the scope of an investigatory stop, transform the stop into an arrest, which must then be supported by probable cause." *State v. Bradford*, 620 N.W.2d 503, 506 (Iowa 2000). In *Bradford*, police detained the defendant for close to an hour, handcuffed him, placed him in a patrol car, and transported him to the police station. *Id.* at 507. Our supreme court concluded: "This clearly exceeded the

permissible bounds of an investigatory stop." *Id*. The court noted removal of a suspect from the scene generally marks the point of arrest, concluding "there is no such thing as a '*Terry* transportation.'"

Here, the situation was similar. Hansen was frisked, handcuffed, driven to the police station, and interviewed on and off for two hours. He was also *Mirandized*. Although giving *Miranda* to a detainee does not automatically convert a *Terry* stop into an arrest, it is evidence the nature of the detention has grown more serious. *See United States v. Obasa,* 15 F.3d 603, 608 (6th Cir. 1994). Hansen testified he believed he was under arrest and "was going to jail."

In reaching its decision on the motion to dismiss, the district court struggled with the incongruence between the police handcuffing and transporting Hansen, yet telling him he was not under arrest. But the district court ultimately found no arrest occurred, distinguishing *Wing* for four reasons: (1) Hansen "kept changing his story as to what happened" and waived his *Miranda* rights before talking to the detectives; (2) the police removed his handcuffs at the station and released him after two hours of questioning; (3) the police repeatedly told Hansen he was not under arrest; and (4) "the evidence suggests Hansen could not have been arrested that night."

Our reading of *Wing* calls for a different result. The circumstances listed by the district court cannot overcome the significant restraint placed on Hansen's freedom by the Davenport police. The court's first and fourth reasons allude to the ongoing gathering of evidence and suggest the police could not have arrested Hansen because they did not have probable cause to do so before

completing their investigation. The parties devote a large share of their briefs to arguing whether the police had probable cause to arrest Hansen the night of March 7. Initially, we note criminal investigations do not come to a halt the moment police have the minimum evidence to establish probable cause, a quantum of proof which may fall short of that necessary to support a conviction. *See Hoffa v. United States*, 385 U.S. 293, 310 (1966). Moreover, the probable cause debate is not central to the *Wing* analysis. A reasonable person's belief that he or she has been arrested is formed without knowledge of the amount of evidence available to the police; rather, it is based on how the person experiences the coercive nature of the police actions. *See Wing*, 791 N.W.2d at 249 (citing *Berkemer v. McCarty,* 468 U.S. 420, 442 (1984) ("the only relevant inquiry is how a reasonable [person] in the suspect's position would have understood [the] situation")).

We also reject the court's second reason for not finding an arrest—that police removed Hansen's handcuffs before the interview and released him after two hours of questioning. Once the officers took steps to deprive Hansen of his freedom that went beyond a *Terry* detention they could not turn back the clock. *See State v. Davis,* 525 N.W.2d 837, 840 (Iowa 1994) (holding a person cannot be arrested and later "unarrested" to stop the tolling of the speedy indictment period).

Finally, we address the most vexing detail—that the police repeatedly told Hansen he was not under arrest. As Hansen admits in his brief: "This was the only fact that could have caused [him] to doubt whether he was under arrest."

But simply telling a person he or she is not under arrest does not make it so. Peace officers cannot avoid the impact of *Wing* by professing they are not making an arrest while holding a suspect in custody. An arrest may objectively occur even if the officer does not formally announce the arrest and even if the officer does not possess a subjective intent to arrest. *Wing*, 791 N.W.2d 248–49 (explaining what a suspect is told about his arrest status is one factor to be considered). Hansen was repeatedly told he was not under arrest but also told he was not free to leave. The officers' mixed messages did not support the district court's conclusion that Hansen had not been arrested.

We conclude that for purposes of the speedy indictment rule, Hansen was arrested on March 7, 2012. The State did not file a trial information until June 6, 2012—ninety-one days later. The district court erred by denying Hansen's motion to dismiss. We reverse and remand for entry of a dismissal.

REVERSED AND REMANDED FOR DISMISSAL.